(4)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

Writ Petition No. 2662 of 2004

PETITIONER : Rahul Jain
S/O B.L. Jain
20, South Avenue
Choubey Colony,
Raipur (C.G.)

P. R. No. 2663/04
Presented by Shri Rajesh Yadav
dated 1-11-04

VERSUS

RESPONDENTS :

(1) The Income Tax Officer
Ward 1(3) Raipur (C.G.)

(2) Union of India through
Secretary Ministry of
Finance, North Block
New Delhi

(3) Chief Commissioner of
Income Tax, Raipur (C.G.)

Received
Raj Kumar
17/8/04
Clerk to Shri
VINAY HARIT
Senior Central Government Standing Counsel
CHHATTISGARH HIGH COURT

Before : Hon'ble The Chief Justice and his companion judges of the High Court of Judicature Chhattisgarh at Bilaspur

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF SUITABLE DIRECTIONS, ORDERS OR WRITS INCLUDING WRITS IN THE NATURE OF MANDAMUS, CERTIORARI PROHIBITION ETC. :-

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2662/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	23/3/2005 Shri Shashank Dubey, Sr. Advocate, with Shri Neelabh Dubey, counsel for the petitioner. Shri Amit Choudhary, Standing Counsel for the Income Tax Department/respondents no.1 and 3. Heard. The petitioner has filed the present petition challenging the notice dated 30/7/2004 issued by the Income Tax Officer under Section 143(2) of the Income Tax Act. Briefly stated the facts are that for the assessment year 1997-98 the petitioner filed his return of income before the Income Tax Officer, Ward 1(3), Raipur. The assessment order under Section 143(3) of the Income Tax Act was passed on 31/3/2000. It is contended that the Income Tax Officer assessed the petitioner and treated agriculture income shown as income from undisclosed sources and also made addition towards other heads as per Annexure-P/2. The petitioner preferred an appeal before the Commissioner (Appeals), who	

पीछे देखिये

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	after considering the matter set aside the assessment to be done de novo on 16/3/2001 as per Annexure-P/3. Shri Chaudhary, learned counsel for the respondents no.1 and 3, contended that the aforesaid assessment was received in the office of Commissioner, Income Tax, on 26/4/2001. It is further stated that the notice was issued on 26/7/2004. Learned counsel for the petitioner contended that the notice was issued on 30/7/2004 as per Annexure-P/1, which itself is liable to be quashed as being barred by time. It is submitted that under Section 153 (2A) of the Income Tax Act it was incumbent on the Assessing Officer to make the fresh assessment before the expiry of one year from the end of financial year, in which the order under Section 250 or Section 254 is received. It is further submitted that accordingly the assessment could have been made upto 31/3/2003. It is also submitted that even the year 2004 passed and assessment having not been made the notice is liable to be quashed.	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Section 153(2A) of the Income Tax Act is pertinent and is quoted below:

> *"153. **Time limit for completion of assessments and reassessments**-*
>
> *(1) xxxx xxxx*
>
> *xxxx*
>
> *(2) xxxx xxxx*
>
> *xxxx*
>
> *(2A) Notwithstanding anything contained in sub0sections (1) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner.*
>
> *Provided that where order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such an order of fresh assessment may be made at any time up to the 31st day of March, 2002.]"*

[पीछे देखिये

(43)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....**सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	In view of the abovesaid legal position, it is amply clear that the notice dated 30/7/2004 issued by the department is hopelessly barred. The period of limitation provided under the Act is to be strictly followed and it cannot be ignored. The compliance within the stipulated period is mandatory and under the facts and circumstances of the case and in view of the legal position, the petition is allowed and the impugned notice dated 30/7/2004 (Annexure-P/1) is liable to be quashed and is quashed. Costs as incurred. **Sd/-** **Fakhruddin** **Judge**	

GKPRJ—FS/78 —9/200(—50,000.

4/3.05